

BELLSOUTH

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

March 5, 1998

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

RE: In The Matter of Communications Assistance for Law Enforcement Act
(CALEA) CC Docket No 97-213
Ex Parte

Dear Ms. Salas:

This is to inform you that on March 5, 1998, Lloyd Nault and Ben Almond, both of BellSouth Corporation met with FCC members of the Common Carrier Bureau (CCB), Office of Engineering and Technology (OET) and Wireless Telecommunications Bureau (WTB) concerning the above referenced subject.

The discussion centered on the status of disagreements between the Industry and the Federal Bureau of Investigation (FBI) concerning CALEA standards, wiretap capacity requirements and cost reimbursement regulations for compliance with the law and the October 25, 1998 effective date. The sum total of these issues were mentioned in the referenced docket proceeding but the Commission did not specifically seek comments for these subject areas. However, there were points made concerning BellSouth's procedures to execute court authorized wiretaps.

The attached documents were used for discussion purposes. Please associate this notification and accompanying materials with the referenced docket proceeding.

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The FCC attendees for the CCB were Kent Nilsson, David Ward and Marty Schwimmer; for the OET were Jim Burtle, Lawrence Petak and Charles Iseman; for the WTB were David Wye, John Conwell and Tim Maquire.

Please contact the undersigned, if there are questions concerning this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Ben G. Almond". The signature is fluid and cursive, with the first name "Ben" and last name "Almond" clearly distinguishable.

Ben G. Almond
Executive Director-Federal Regulatory

Attachments

cc: Kent Nilsson
David Ward
Marty Schwimmer
Jim Burtle
Lawrence Petak
Charles Iseman
David Wye
John Conwell
Tim Maquire

March 5, 1998

BellSouth Corporation

**Communications Assistance For
Law Enforcement Act (CALEA)**

BellSouth's View

I. Status – Industry's negotiations with FBI, CALEA standards

- March 6, 1998 meeting scheduled with Attorney General Janet Reno
- FBI insistence on "Punch List" features
- FBI funding for CALEA
- Cost reimbursement regulations issued by the FBI

II. Status – Congressional Activities

III. BellSouth's Petition For Extension/FCC Required Action

Presently, CALEA mandates cannot be met by the telecommunications industry. BellSouth anticipates filing a petition request, soon.

FCC should act immediately to resolve:

- Standards Dispute
- Capability/capacity requirements
- New compliance dates
 - Extension of October 25, 1998 date
 - Grandfather date associated with reimbursement for significant upgrades and major modifications

Next priority is for FCC to establish

- Reasonable cost reimbursement regulations...

Communications Assistance for Law Enforcement Act (CALEA)

- CALEA was intended by Congress to be implemented by the telecommunications industry (manufacturers/carriers) by October 24, 1998:
 - Industry to develop publicly available technical standards which provide "safe harbor"
 - Industry to develop and deploy compliant technology which meets the assistance capability and capacity requirements of CALEA.
 - Industry to secure its systems so that only authorized electronic surveillance occurs, customer privacy is protected, and electronic surveillance is unobtrusive.
 - Existing and incumbent technology deemed compliant (grandfathered) unless retrofitted at government expense.
 - Industry to be reimbursed reasonable costs, up to \$500 million.
- Attorney General (FBI) role intended by Congress to be consultative:
 - FBI to consult on industry standards development
 - FBI to issue by October 24, 1995 its capacity notice (numbers and types of surveillances it expects to conduct).
 - FBI to issue cost reimbursement regulations.
 - FBI prohibited from requiring or specifying any particular design, technology, features, equipment, or services to be adopted by the industry.
- Congress intended for FCC to rule on petitions for extension of time to comply and the reasonable achievability and availability of technology, and standards and cost reimbursement issues.

Industry implementation efforts:

1. Issued standards in December, 1997 -despite years of delay and inappropriate demands by the FBI.
2. Began the development of CALEA-complaint technology based on publicly available technical standards.
3. Continued to assist law enforcement in the conduct of electronic surveillance with few observed problems.
4. Tried to address FBI "punch list" concerns and "cooperative agreement" demands.

FBI has:

1. Failed to issue its capacity notice so industry can properly size and develop CALEA-compliant technology.
2. Delayed the issuance of industry standards by demanding that it include capabilities outside the scope of CALEA ("punch list")- FBI has remedy to address standards at the FCC but has failed or refused to.
3. Improperly shifted costs to industry through its cost reimbursement regulations.
4. Tried to turn implementation of CALEA into a government procurement through the "cooperative agreement" process.
5. Threatened enforcement actions against industry unless it develops and deploys the features the FBI specifies ("punch list")
6. Attempted to direct the choice of a particular technology through its cost reimbursement authority.
7. Failed to develop an appropriate implementation plan for the expenditure of \$500 million.

Legislative History of CALEA

Purposes of CALEA:

- 1.) preserve government electronic surveillance ability
- 2.) protect privacy of communications
- 3.) not impede new technology, features or services

Carrier Assistance Requirements:

- 1.) isolate content of subject's communications
- 2.) isolate call identifying information of subject
- 3.) provide content and call identifying information to law enforcement
- 4.) conduct interceptions unobtrusively -- protect privacy

Congress expected the telecommunications industry, law enforcement, and the FCC to narrowly interpret CALEA and its requirements.

Carriers are implementers of interceptions, not agents of law enforcement.

Systems Security and Integrity Section (Section 105 of CALEA) only requires practices to ensure that interceptions effected within a carrier's switching premises are activated by the carrier.

Summary of the Punch List:

1. **Subject-Initiated Multiparty Calls - also referred to as Conference Calling**
 - Industry standard requires the ability to follow the subject's (target's) communications;
 - Standard is silent (neutral) on whether call content channels are required to be provided to eavesdrop on parties on hold, who are talking to each other, and not to the subject;
 - Privacy issue; cost and technical feasibility issue.
2. **Party Hold/Join/Drop Messages**
 - FBI wants network messages of the carrier;
 - Not call identifying information or call content;
 - Technical feasibility and cost issue.
3. **Call Control (Subject Input) message - also referred to as Feature Keys:**
 - FBI wants network messages of the carriers;
 - Not call identifying information or call content;
 - Technical feasibility and cost issue;
 - FBI continues to get content of subject's communication and call identifying information without this requested capability.
4. **Alert Tones - also referred to as Network Signals:**
 - FBI wants network messages of the carrier, i.e. network message to a subscriber (message waiting light or tone) that a voice message is in their mailbox;
 - Not call identifying information or call content;
 - Technical feasibility and cost issue ;
 - FBI still able to obtain contents of voice mailbox pursuant to court order.
5. **Timing:**
 - Association of call identifying information and call content;
 - Requires greater specificity or technical performance than a subscriber receives;
 - Technical issue.
6. **Surveillance Status Message (Content) and**
7. **Surveillance Status Message (Data):**
 - Not call identifying information or call content;
 - "Gold Plating";
 - Technical feasibility and cost issue;
 - Would notify law enforcement that "everything is fine" in the network with regard to the surveillance.
- Dropped 8. **Standard Delivery Interface:**
 - Not call identifying information or call content;
 - Today, carriers (and their manufacturers) deliver call identifying information and call content in different ways;
 - Industry standard does not specify one method of delivery;
 - FBI wants the entire industry to design their equipment one (their) way.
9. **Feature Status Message - instantaneous access to a subscriber's service account or profile:**
 - Not call identifying information or call content;

- "Gold Plating";
- Law enforcement obtains this information today by subpoena;
- Would require carriers to try to tie together and constantly query disparate network systems and data bases to notify law enforcement instantly of a change to a subscriber's service;
- Technical feasibility and cost issue.

10. In Band Digit Extraction (Post Cut Through Digits Dialed) - FBI refers to as "Dialing Information":

- Buttons pushed after a call is sent or dialed; i.e., use of the keypad to bank by phone, work through a menu to make reservations, conduct business, leave a message, etc.;
- Is only an issue with regard to "pen registers" and "trap and trace devices" - law enforcement obtains this information pursuant to a Title III (call content) court order;
- Not call identifying information;
- Director Freeh testified in 1994 that he was not interested in this information;
- Privacy issue;
- Law enforcement is required by CALEA to obtain this information only to the extent that it relates to dialing and signaling information utilized in call processing, and this information is already available with existing technology.
- Technical feasibility and cost issue.

Dropped 11. Separated Call Content:

- FBI wants the industry standards to require a separate call content channels for each potential party to a conversation;
- Serious technical feasibility and cost issue;
- FBI would continue to receive the target's or subject's communication without this capability.